RECEIVED
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-5729

MARK DAVID OLIPHANT AND DANIEL B. BELGARDE, Petitioners

V.

THE SUQUAMISH INDIAN TRIBE, et al, Respondents

MEMORANDUM OF AMICUS CURIAE, KITSAP COUNTY, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN C. MERKEL
Kitsap County Prosecuting Attorney
PAUL S. MAJKUT
Deputy Prosecuting Attorney
Kitsap County Courthouse
614 Division Street
Port Orchard, Washington 98366
Telephone: (206) 876-7174
Attorneys for Amicus Curiae,
Kitsap County

10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-5729

MARK DAVID OLIPHANT AND DANIEL B. BELGARDE, Petitioners

V.

THE SUQUAMISH INDIAN TRIBE, et al, Respondents

MEMORANDUM OF AMICUS CURIAE, KITSAP COUNTY,
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Prosecuting Attorney for Kitsap County concurs in the conclusion of Petitioners that the cases of Belgarde v. Suquamish Indian Tribe, et al., 9th Cir., Cause No. 75-3319 and Oliphant v. Suquamish Indian Tribe, et al., 9th Cir., Cause No. 74-2154 involve questions of imperative public importance such as justify the deviation from normal appellate process and require immediate settlement in this Court. See, pages 3 and 4 of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

This appeal raises important questions concerning the rights of non-Indian citizens of the United States residing on the Port Madison Reservation in Kitsap County in the State of Washington, to be subject to the lawful jurisdiction of the State of Washington. The interests of Kitsap County in this matter

JOHN C. MERKEL
PROSECUTING ATTORNEY
KITSAP COUNTY
614 DIVISION STREET
PORT ORCHARD, WA 98366
876-7174

arise from its responsibility for the administration and enforcement of State laws in Kitsap County and on the Port Madison Indian Reservation. The Petition for Writ of Certiorari in this cause reveals at page 17, that non-Indians own approximately 4,597 acres of the total 7,275 approximate acres of the Port Madison Indian Reservation (63 percent) in fee simple absolute free of trust restrictions of the United States, and subject to local real estate taxes of the State of Washington. Approximately 2,637 acres remain in individual Indian allotment status (36 percent), with patent held in trust by the United States and exempt from local real estate taxes.

The Petition for Writ of Certiorari further reveals that approximately fifty members of Suquamish Indian Tribe are presently living on the Port Madison Reservation. The total permanent population of non-Indians living on the reservation, in approximately 976 permanent dwellings, paying taxes in Kitsap County, is approximately 2,928 persons. At least 750 of the residents of that reservation have objected to the exercise of tribal jurisdiction over them and have evidenced that objection by signing a petition included as Appendix A. Also included in Appendix A are copies of two letters written by the Kitsap County Board of Commissioners expressing their dissatisfaction with the attempted exercise of jurisdiction by the Suquamish Indian Tribe.

Since there is good cause for this Court to grant a writ of certiorari in this case, see Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, at pages 18-28, Kitsap County intends to file a brief amicus curiae in this cause pursuant to United States Supreme Court Rule 42(4).

Respectfully submitted,

JOHN C. MERKEL
Prosecuting Attorney

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

MARK DAVID OLIPHANT and DANIEL B. BELGARDE, Petitioners,	)	NO. 76-5729
V.	)	NOTICE OF APPEARANCE OF AMICUS CURIAE, KITSAP COUNTY
THE SUQUAMISH INDIAN TRIBE, et al, Respondents.	)	

TO: PHILIP P. MALONE, Attorney for Petitioners; GARY D. ERNSTROFF, UNITED STATES DISTRICT ATTORNEY; RICHARD NEELY; and SOLICITOR GENERAL, DEPARTMENT OF JUSTICE, Attorneys for Respondents

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that KITSAP COUNTY appears as amicus curiae in the above-entitled action by its attorney, JOHN C. MERKEL, Prosecuting Attorney in and for Kitsap County, and requests all further pleadings, except original process, in said matter be served upon him at his address stated below.

JOHN C. MERKEL
Kitsap County Prosecuting Attorney
Attorney for Amicus Curiae,
Kitsap County

OFFICE AND POST OFFICE ADDRESS:

JOHN C. MERKEL
Prosecuting Attorney
Kitsap County Courthouse
614 Division Street
Port Orchard, Washington 98366
Telephone: (206) 876-7174

CERTIFICATE OF SERVICE BY MAIL

I, hereby certify that one copy of the foregoing Memorandum of Amicus Curiae, Kitsap County, in Support of Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and one copy of the foregoing Notice of Appearance of Amicus Curiae, Kitsap County, were served upon Petitioners and Respondents by depositing the same in the United States mail at the United States Post Office, Port Orchard Main Office, 87 Sidney, Port Orchard, Washington 98366, on the 21st day of December, 1976 addressed to:

Oliphant v. Suquamish Indian Tribe et al., 9th Cir., 1976, Cause No. 74-2154:

1. PETITIONER:

MARK DAVID OLIPHANT, c/o Philip P. Malone, Attorney at Law, 153 1st Avenue, Poulsbo, Wasington 98370

2. RESPONDENTS:

RICHARD BELMONT, JR., Chairman of Council of Suquamish Indian Tribe; DONALD BREAD, Suquamish Tribal Manager; FRED GUARDIPEE, Suquamish Tribal Police Officer; GRACE DUGGAN, Suquamish Tribal Judge; CECILIA HAWK, Suquamish Tribal Judge; c/o Garry D. Ernstroff, Attorney at Law, Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, 600 First Avenue, Seattle, Washington 98104

3. RESPONDENT:

GEORGE M. FELSHAW, Superintendent of the Western Washington Tribal Agency (deceased), c/o United States District Attorney (Western Washington), Federal Courthouse, Seattle, Washington

4. RESPONDENT:

UNITED STATES REGIONAL SOLICITOR'S OFFICE, c/o Richard Neely, Attorney at Law, P.O. Box 3621, Portland, Oregon 97208

Belgarde v. Suquamish Indian Tribe et al, 9th Cir., Cause No. 75-3319:

1. PETITIONER:

DANIEL B. BELGARDE, c/o Philip P. Malone, Attorney at Law, 153 1st Avenue, Poulsbo, Washington 98370

2. RESPONDENTS:

THE SUQUAMISH INDIAN TRIBE: CECILIA M. HAWK, Judge,

Suquamish Indian Tribe; GRACE DUGGAN, Judge, Suquamish Indian Tribe; c/o BARRY D. ERNSTOFF, Attorney at Law, Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, 600 First Avenue, Seattle, Washington 98104

3. RESPONDENT:

ROGERS C. B. MORTON, Secretary of the Interior of the United States, c/o United States District Attorney (Western District), Federal Courthouse, Seattle, Washington, and c/o Richard Neely, Attorney at Law, P.O. Box 3621, Portland, Oregon 97208.

United States or an Officer of Agency thereof as a party. Rule 33:

1. RESPONDENT:

ROGERS C. B. MORTON, Secretary of the Interior of the United States, c/o United States District Attorney (Western Washington), Federal Courthouse, Seattle, Washington, and c/o Richard Neely, Attorney at Law, P.O. Box 3621, Portland, Oregon 97208.

2. RESPONDENT:

Solicitor General, Department of Justice, Washington, D.C. 20530.

DATED this 21st day of December, 1976.

JOHN C. MERKEL
Kitsap County Prosecuting Attorney
Attorney for Amicus Curiae,
Kitsap County

County Commissioners TLD 1477

The present Suquamish Indian Tribal government in Kits. County, Washington, is claiming jurisdiction over the property and persons of all residents living within the original exterior boundaries of the Port Madison Indian Reservation. Therefore the undersigned persons who own property, or reside within those boundaries, petition the President and the Congress of the United States to uphold the validity of our patent, or fee simple lands; and to be relieved of the claims of the present Suquamish Tribal government that all residents in this area are under their jurisdiction and shall be governed by them without representation. These patent lands were originally purchased from Indian allotted lands, and there is nothing in the original abstracts that reserves the right of jurisdiction over the new owners, by the Suquamish Indians.

We respect the Indian right to govern themselves, if that be their wish, but we also ask that our rights be protected by allowing us to maintain our status as citizens of Kitsap County, the State of Washington, and the United States of America. No Tribal government of the Suquamish, until the present one, has insisted on sovereignty rights over the non-Suquamish Indian population.

We therefore, in the interests of the peace and welfare of all citizens living in this area, do petition that the patent lands be deleted from the original boundaries of this reservation, and that this area be recognized for what it presently is: approximately 2600 acres of allotted lands owned by individual Indians and lived on by 50 members of the Suquamish Indian Tribe; approximately 4700 acres of fee simple land lived on by 2928 non-members of the Suquamish Tribe; and 36 acres of tribal land, leased for 50 years to non-Indians.

NAME	ADDRESS	DATE
Arthur Carlson	Box 48 Suquamish, Wn.	2-6-7
Alan R Porter	Box 447 Poulsbo	2/6/7
Ray Haugland	P.O. Box-114 Suquamish	2/6/7
Mary E Haugland	P.O. Box 114 Suquamish	2/6/74
L A Neville	P O 64 Suquamish	2/7/7
Ruby Neville	P O 64 Suquamish	2/7/74
[illegible]	RT 1 Box 110	[illegible]
Ruth Miller	1024 SW Dewey Bremerton	2-7-7
Dale E. Olson	P.O. Box 259 Suquamish	
Albert Olson	Box 8755 Bainbridge Isl. 98110	2-8-

KITSAP COUNTY
614 DIVISION STREET
PORT ORCHARD, WA 98366
AREA CODE 206, TEL. TR 6-4441

BOARD OF COMMISSIONERS
FRANK RANDALL
District 1
WILLIAM H. MAHAN
District 2
GENE LOBE
District 3

August 6, 1974

The President, Richard M. Nixon
The White House
Washington, D.C.

My Dear Mr. President:

Enclosed you will find petitions filed by some 750 persons which constitutes nearly all the permanent residents within the historic boundaries of the Port Madison Indian Reservation.

The Board of Commissioners is acting as forwarding agent for these petitions because of our complete agreement with the concerns and the ideals enunciated on the petitions as well as our concern about the rather tense situation that is developing here in this county. We feel very strongly that if the Indians' objectives were carried out it would constitute a flagrant example of government without representation. There are, according to our records, approximately 50 members of the Port Madison Tribe residing within the historic boundaries (23 of them, incidentally, have signed the enclosed petitions) and to have this small handful of persons acting as a government for some 2,000 non-Indian landowners, none of whom have the right to elect anyone to the Tribal Council or to have any say about their representation would be, we believe, clearly unconstitutional.

We recognize there are many Reservations with many degrees and types of problems but we firmly believe that in this instance what these people are asking for is right and proper.

The delay in forwarding these was brought about by the Board of Commissioners because of some rather delicate negotiations with the Suquamish Tribal Council regarding a sewerage system for the community of Suquamish. The Board did not want to "rock the boat". Those negotiations now have, however, broken down completely and so we are therefore forwarding these petitions on to you.

Copy

Please let us know if we can answer any questions.

Very Sincerely Yours,

KITSAP COUNTY BOARD OF COMMISSIONERS

Gene Lobe

Gene Lobe, Chairman

William H. Mahan

William H. Mahan, Commissioner

Frank Randall

Frank Randall, Commissioner

FR: pb

Enclosures

Copy to:
Senator Magnuson
Senator Jackson
Senator Abourezk
Congressman Meeds
Mrs. Ky Dewar
Mr. Travis Baker
President Gerald Ford 8/28/74

KITSAP COUNTY
614 DIVISION STREET
PORT ORCHARD, WA 98366
AREA CODE 206, TEL. TR 6-4441

BOARD OF COMMISSIONERS
FRANK RANDALL
District 1
WILLIAM H. MAHAN
District 2
GENE LOBE
District 3

August 29, 1975

The President, Gerald Ford
The White House
Washington, D.C.

My Dear Mr. President:

The enclosed letter and copy of petition were sent to you by this office a year ago. At the present time no response has been received. The situation that occasioned the petition has become even more critical with the Federal Court decision last week that the Indian Tribe has concurrent police jurisdiction with the state within the entire historic boundaries of the reservation. Bear in mind that two-thirds of the Indian lands have been sold and are now fee-patent land under non-Indian ownership. The courts of our land seem to be of no help and we firmly believe it will take congressional action to rectify this inequitable situation.

Copies of the entire 750 names are on file in this office. If you desire, we will forward them on to you.

Very sincerely yours,

KITSAP COUNTY BOARD OF COMMISSIONERS

Frank Randall

Frank Randall, Chairman

William H. Mahan

William H. Mahan, Commissioner

Gene Lobe

Gene Lobe, Commissioner

FR:pb

Enclosures
cc: Senator Magnuson, Senator Jackson, Senator Abourezk, Congressman Meeds, Mrs. Ky Dewar, Congressman Joel Pritchard

copy